

Recording Requested by:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

After Recording return to:

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\_\_\_\_\_

## U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT REGULATORY AGREEMENT FOR MULTIFAMILY PROJECTS AND HEALTH CARE FACILITIES

UNDER SECTIONS 220, 221(d)(3), 221(d)(4), 223(f), 231 and 232 OF THE NATIONAL HOUSING ACT, AS AMENDED

Replaces HUD 92466, 92466-E, 92466-NHL, FHA-1730, 1733, 2466-fse, 2466-NHL,

**Project No.:** Elderly \_\_\_\_ Non-Elderly \_\_\_\_

**Mortgagee:**

**Original Principal Amount of Multifamily Note:**

**Date of Note:**

**Originally endorsed for insurance on** \_\_\_\_\_, \_\_\_\_\_ **under Section** \_\_\_\_\_.

<b>Security Instrument Recorded:</b>	<b>State</b>	<b>County</b>	<b>Date</b>
<b>Book/Volume</b>	<b>Page</b>	<b>Instrument/Document Number</b>	

**Mortgagor:** Profit-Motivated \_\_\_\_ Limited Dividend \_\_\_\_ Public Body \_\_\_\_ Non-Profit \_\_\_\_  
(Failure to check the appropriate space shall not affect the enforceability or application of this Agreement.)

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between and among \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_, whose address is \_\_\_\_\_, its successors, heirs, and assigns (jointly and severally), (Mortgagor), \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_, whose address is \_\_\_\_\_, its successors, heirs, and assigns (jointly and severally)(Lessee)(if applicable), and the Secretary of Housing and Urban Development, his or her successors, assigns or designates (HUD).

In consideration of, and in exchange for, an action by HUD, the Mortgagor agrees to the terms of this Agreement. The HUD action may be one of the following: the endorsement for insurance by HUD of the Note, the consent of HUD to the Transfer of the Mortgaged Property, the sale and conveyance of the Mortgaged Property by HUD, or the

consent of HUD for other actions related to the Mortgagor or to the Mortgaged Property.

Further, the Mortgagor and HUD execute this Agreement in order to comply with the requirements of the National Housing Act, any related legislation, regulations,

and administrative requirements adopted by HUD. This Agreement shall continue during such period of time as HUD shall be the owner, holder, or insurer of the Note, or is obligated to protect rights of residents of the Mortgaged Property.

Violation of this Agreement or of the regulations and Directives of HUD may subject the Mortgagor and related parties to adverse actions. Refer to Article VII below.

**AGREEMENTS:** The Mortgagor and HUD covenant and agree as follows:

## I. DEFINITIONS

1. **DEFINITIONS.** The following terms, when used in this Agreement (including when used in the above recitals), shall have the following meanings, whether capitalized or not and whether singular or plural, unless, in the context, an incongruity results:

a. **"Affiliate."** Persons and entities are affiliates of each other if, directly or indirectly, either one controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which or entity has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person or entity.

b. **"Displaced Persons or Families"** means a family or families, or a person, displaced from an urban renewal area, or as a result of government action, or as a result of a major disaster determined by the President pursuant to the Disaster Relief and Emergency Assistance Act.

c. **"Directives (of HUD)"** includes written guidance issued by HUD relating to HUD's multifamily or nursing home insurance programs under the National Housing Act, as amended, and any successive legislation. Directives include handbooks, guidebooks, Notices, Mortgagee Letters and other written directives issued by HUD whether or not published in the Federal Register.

d. **"Distribution"** means any disbursement, conveyance or transfer of cash or of any asset of the Mortgagor or in the Mortgaged Property, including the segregation of cash or assets for subsequent withdrawal as Surplus Cash, other than in payment of expenses that are determined by HUD to be reasonable and necessary.

e. **"Elderly project or Elderly portion of project"** means a Project or portion of a Project which is designed for occupancy by persons, married or single, who are 62 years of age or older.

f. **"Fixtures"** means all property which is attached to the Land or the Improvements as to constitute a fixture under applicable law, whether acquired now or in the future. Fixtures include (without limitation): machinery, equipment (including medical equipment and systems), engines, boilers, incinerators, installed building materials; systems and equipment for supplying or distributing heating, cooling,

electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, computers, medical systems, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposals, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; playground and exercise equipment and classroom furnishings and equipment.

g. **"HUD"** means the United States Department of Housing and Urban Development acting by and through the Secretary in the capacity as insurer or holder of the Note acting under the authority of the National Housing Act or any other federal law or regulation pertaining to the Indebtedness or the Mortgaged Property.

h. **"Impositions" and "Imposition Deposits"** are defined in the Security Instrument.

i. **"Improvements"** means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

j. **"Indebtedness"** means the principal of, interest on, and all other amounts due at any time under the Note, the Security Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and advances as provided in the Security Instrument to protect Mortgagee's security interest in the Mortgaged Property.

k. **"Land"** means the estate in realty described in Exhibit A.

l. **"Leases"** means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or non-residential leases), and all modifications, extensions or renewals.

m. **"Limited Dividend Mortgagor"** means a Mortgagor which is limited by this Agreement, regulations or Directives as to Distributions.

n. **"Loan Documents"** means the Note, the Security Instrument, this Agreement, all documents establishing escrows or accounts for the benefit of the Mortgaged Property pursuant to HUD regulations and Directives, all guaranties, all indemnity agreements, all collateral agreements, operations and maintenance programs, and any other documents now or in the future executed by Mortgagor, any guarantor or any other person in connection with the loan evidenced by the Note, as such documents may be amended from time to time.

o. **"Mortgaged Property"** means all of the Mortgagor's present and future right, title and interest in and to all of the following:

(1) the Land;

(2) the Improvements;

(3) the Fixtures;

(4) the Personality;

(5) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;

(6) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property, whether or not the Mortgagor obtained the insurance pursuant to the Mortgagee's requirement;

(7) all awards, payments and other compensation made or to be made by any municipal, State or Federal authority with respect to the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;

(8) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property entered into by the Mortgagor now or in the future, including cash or securities deposited to secure performance by parties of their obligations;

(9) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds;

(10) all Rents and Leases;

(11) all earnings, royalties, instruments, accounts, accounts receivable, supporting obligations, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by the Security Instrument;

(12) all Imposition Deposits;

(13) all refunds or rebates of Impositions by any municipal, State or Federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Security Instrument is dated);

(14) all tenant security deposits which have not been forfeited by any tenant under any Lease;

(15) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property; and

(16) for Health Care Facilities, Mortgaged Property also includes, but is not limited to, any and all licenses, Bed Authority, and/or Certificates of Need required to operate the facility and receive the benefits and reimbursements under a provider agreement with Medicaid, Medicare, any State or local programs, health care insurers or other assistance providers relied upon by HUD to insure the Security Instrument, to the extent allowed by law. Mortgaged Property also includes all receipts, revenues, income and other moneys received by or on behalf of the Health Care Facility, including all accounts receivable, all contributions, donations, gifts, grants, bequests, all revenues derived from the operation of the Health Care Facility and all rights to receive the same, whether in the form of accounts receivable, contract rights, chattel paper, instruments or other rights whether now owned or held or later acquired by the Health Care Facility.

p. **"Mortgagee"** means the entity identified as "Mortgagee" in the first paragraph of the Security Instrument, or any subsequent holder of the Note.

q. **"Mortgagor"** means all persons or entities identified as "Mortgagor" in the first paragraph of the Security Instrument, together with its successors and assigns. Mortgagor shall include any person or entity taking title to or coming into control of the Mortgaged Property whether or not such person or entity assumes the Note.

r. **"Non-Profit Mortgagor"** means a Mortgagor which is organized as a non-profit corporation or association in accordance with the law of its State of organization. Minimally, the entity may not make Distributions to any individual member or shareholder.

s. **"Note"** means the Multifamily Note described in the Security Instrument, including all schedules, riders, allonges and addenda, as such Multifamily Note may be amended from time to time.

t. **"Personalty"** means all furniture, furnishings, equipment, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible or electronically stored personal property (other than Fixtures) which are used or acquired now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements, choses in action and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land.

u. **"Principals"** are the following legal and natural persons having ownership interests in the Mortgagor; natural persons who are sole owners, joint venturers, joint tenants, tenants in common, tenants by the entirety, trustees of passive trusts, and all general partners; in the case of limited partnerships, limited partners having a twenty-five (25) percent or more interest in the partnership; in the case of public or private corporations or governmental entities, the president, vice president, secretary, treasurer, and all other executive officers who are directly responsible to the board of directors, or any equivalent governing body, as well as all directors and each stockholder having a 10 percent or more interest in the corporation; in the case of a Limited Liability Company (LLC), all managing members, all managers, and all members with a 10 percent or greater governance interest or a 25 percent or greater financial interest.

v. **"Project"** means the Mortgaged Property and all other assets of whatever nature or wherever located, used in or owned by the business conducted on the Mortgaged Property, which business is providing housing and other related activities.

w. **"Property Jurisdiction"** is (are) the jurisdiction(s) in which the Land is located.

x. **"Public Body Mortgagor"** means a Federal or State instrumentality, a municipal corporate instrumentality of one or more States, or a limited dividend or redevelopment or housing corporation formed under and restricted by Federal or State laws or regulations of a State banking or insurance department as to rents, charges, capital structure, rate of return, or methods or operation.

y. **"Reasonable and necessary"** means such items that are exclusive and essential to the proper operation, management, and maintenance of the Mortgaged Property.

z. **"Rents"** means all rents (whether from residential or non-residential space), revenues, issues, profits, (including carrying charges, maintenance fees, and other cooperative revenues) and other income of the Land or the Improvements, including all revenues, gross receipts and receivables in connection with medical services and care, and all pledges, gifts, grants, bequests, contributions and endowments, parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants.

aa. **"Residual Receipts"** is a term which applies to certain funds held by Non-Profit, Public Body and Limited Dividend Mortgagors whose Notes are insured or held by HUD pursuant to Section 221(d)(3), 231 and 232 of the National Housing Act. Residual Receipts are calculated by determining an amount of Surplus Cash (defined below).

After the calculation of Surplus Cash, as described below, the Mortgagor may make any Distributions permitted by this Agreement, HUD regulations and Directives. "Residual Receipts" will be the restrictive cash held by Section 221(d)(3), 231 and 232 Non-Profit, Public Body, and Limited Dividend Mortgagors remaining after any allowable

Distributions. The use of these Residual Receipts is restricted under this Agreement.

bb. **"Security Instrument"** means the Mortgage, Deed of Trust, or other designation as appropriate by Property Jurisdiction, Assignment of Rents and Security Agreement, and any other security for the Indebtedness.

cc. **"Surplus Cash"** means any cash plus amounts receivable on tenant subsidy vouchers (earned in the applicable fiscal period) remaining after:

(1) The payment of: (i) all sums immediately due or currently required to be paid under the terms of the Note and other Loan Documents due on the first day of the month following the end of the fiscal period; including without limitation, all amounts required to be deposited in the reserve for replacement fund or other reserves as may be required by HUD; and (ii) all other obligations of the Project (accounts payable and accrued, unescrowed expenses) unless funds for payment are set aside or deferment of payment has been approved by HUD, and

(2) The segregation and recording of: (i) an amount equal to the aggregate of all special funds required to be maintained by the Mortgagor; (ii) the greater of the Mortgagor's total liability or the amount held by the Mortgagor for tenant security deposits; and (iii) all accounts and accrued items payable within thirty (30) days after the end of the fiscal period.

dd. **"State"** includes the several States and Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

ee. **"Taxes"** means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, could become a lien on the Land or the Improvements.

ff. **"Transfer"** means (1) a sale, assignment, transfer or other disposition (whether voluntary, involuntary or by operation of law); (2) the granting, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary or by operation of law); (3) the issuance or other creation of an ownership interest in a person or legal entity, including a partnership interest, interest in a limited liability company or corporate stock; (4) the withdrawal, retirement, removal or involuntary resignation of a partner in a partnership or a member or manager in a limited liability company; or (5) the merger, dissolution, liquidation, or consolidation of a legal entity or the reconstitution of one type of legal entity into another type of legal entity. "Transfer" does not include (i) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under the Security Instrument, (ii) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code, or (iii) an interest acquired by inheritance or by Court decree. For purposes of defining the term "Transfer," the term "partnership" shall mean a general partnership, a limited partnership and, a joint venture and a limited liability

partnership, and the term "partner" shall mean a general partner, a limited partner and a joint venturer.

gg. **"Waste"** means a failure to keep the Mortgaged Property in decent, safe and sanitary condition and in good repair. During any period in which HUD insures the Note or holds a security interest on the Mortgaged Property, Waste is committed when, without the Mortgagee's and HUD's express written consent, the Mortgagor: (1) physically changes the Mortgaged Property, whether negligently or intentionally, in a manner that reduces its value; (2) fails to maintain and repair the Mortgaged Property in a reasonable manner, except for repair of casualty damage or acts of third parties not the fault of the Mortgagor; (3) fails to pay before delinquency any Taxes secured by a lien having priority over the Security Instrument; (4) materially fails to comply with covenants in the Loan Documents respecting physical care, maintenance, construction, demolition, or insurance against casualty of the Mortgaged Property or materially fails to comply with HUD requirements regarding physical condition standards for HUD housing, including those codified at 24 C.F.R. § 5.703 and any subsequent amendments thereto; or (5) retains possession of rents to which the Mortgagee or its assigns have the right to possession under the terms of the Loan Documents.

## II. CONSTRUCTION

2. **CONSTRUCTION FUNDS.** The Mortgagor shall keep construction funds of the Mortgaged Property separate and apart from operating funds of the Mortgaged Property.

3. **UNPAID OBLIGATIONS.** The Mortgagor agrees that upon completion of construction of the Mortgaged Property there shall be no unpaid obligations contracted in connection with the purchase of the Mortgaged Property, the construction of the Mortgaged Property, or with respect to the Security Instrument insured by HUD except such unpaid obligations as have the prior written approval of HUD as to terms, form and amount.

4. **MORTGAGEE'S CERTIFICATE.** The Mortgagor agrees to be bound by the terms of the Mortgagee's Certificate executed concurrently with this Agreement and agrees that the fees and expenses enumerated in that Certificate have been fully paid or payment provided for as provided for in the Certificate and all funds deposited with the Mortgagee will be used for the purposes set forth in the Certificate.

5. **CONSTRUCTION COMMENCEMENT.** The Mortgagor agrees that it has not commenced construction of the Mortgaged Property, except that this Section 5 is not applicable if HUD has given prior written approval to an early start of construction, or if this Project is an Insurance Upon Completion or a refinance.

6. **DRAWINGS AND SPECIFICATIONS.** The Mortgagor agrees that the Mortgaged Property will be constructed in accordance with the terms of the Construction Contract, if any, and with the "Drawings and Specifications."

7. **REQUIRED PERMITS.** The Mortgagor agrees that it will obtain all necessary building and other permits and that the Mortgaged Property will not be occupied by any resident

without the prior written approval of HUD and from all other legal authorities having jurisdiction of the Mortgaged Property.

8. **OUTSTANDING OBLIGATIONS.** The Mortgagor agrees that it will have no obligations as of the date of this Agreement except those approved by HUD and, except for those approved obligations, the Land has been paid for in full and is free from any liens or purchase money obligations.

9. **ACCOUNTING REQUIREMENTS.** The Mortgagor agrees that it will submit an accounting to HUD for all receipts and disbursements during the period starting with the date of first occupancy of the Mortgaged Property and ending, at the option of the Mortgagor, either on (a) the last day of the month in which the Mortgaged Property is determined by HUD to be acceptably completed; or (b) one month from the date the Mortgaged Property is determined by HUD to be acceptably completed. The Mortgagor also agrees that the excess of receipts over property disbursements, as determined by HUD, shall be treated as a recovery of construction cost.

## III. FINANCIAL MANAGEMENT

10. **PAYMENTS.** The Mortgagor assumes and agrees to make promptly all payments due under the Note and Security Instrument.

11. **RESERVE FOR REPLACEMENT FUND.** The Mortgagor agrees to establish and maintain a reserve for replacement fund to cover the cost of major replacements that are for the purpose of effecting replacement of structural elements and mechanical equipment of the Project or for any other purpose.

a. The reserve for replacement fund shall be held by the Mortgagee or by a safe and responsible depository designated by the Mortgagee. Such funds shall at all times remain under the control of the Mortgagee, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America or in such other investments as may be allowed by HUD.

b. The Mortgagor agrees to deposit at endorsement of the Note an initial amount of \$\_\_\_\_\_, if applicable, and the Mortgagor agrees to deposit a monthly amount of \$\_\_\_\_\_, concurrently with the beginning of payments towards amortization of the principal of the Security Instrument insured or held by HUD unless a different date or amount is established by HUD. The amount of the monthly deposit may be increased or decreased from time to time at the direction of HUD without a written, recorded amendment to this Agreement.

c. The Mortgagor agrees to carry the balance in this fund on the financial records as a restricted asset. The Mortgagor agrees that the reserve for replacement fund shall be invested in interest bearing accounts or investments, and that any interest earned on the investment shall be deposited in the reserve for replacement fund for use by the Project in accordance with this Section 11.

d. The Mortgagor agrees that disbursements from such fund may be made only after receiving the consent, in writing, of HUD. In the event of a Declaration of Default under the terms of the Security Instrument, pursuant to which the Indebtedness has been accelerated, or at such other times as determined solely by HUD, HUD may direct the application of the balance in such fund to the amount due on the Indebtedness as accelerated or for such other purposes as may be determined solely by HUD.

e. Where the Project is subject to a Security Instrument insured or held by HUD as of the date hereof, the reserve for replacement fund to be established shall be equal to the amount due to be in such fund under existing agreements or charter provisions, and payments hereunder shall begin with the first payment due on the Security Instrument after acquisition, unless some other method of establishing and maintaining the fund is approved in writing by HUD.

**12. RESIDUAL RECEIPTS.** Section 221(d)(3), 231 and 232 Non-Profit and Public Mortgagors and Section 221(d)(3), 231 and 232 Limited Dividend Mortgagors shall establish and maintain, in addition to the reserve for replacement fund, a Residual Receipts Fund by depositing thereto, with the Mortgagee, the Residual Receipts, as defined herein, within ninety (90) days after the end of the semiannual or annual fiscal period within which such receipts are realized. Such fund shall be held by the Mortgagee or by a safe and responsible depository designated by the Mortgagee in an interest bearing account. The Residual Receipts shall be under the control of HUD, and shall be disbursed only on the direction of HUD, who shall have the power and authority to direct that the Residual Receipts, or any part thereof, be used for such purpose as it may determine.

**13. PROJECT PROPERTY.** The Mortgagor agrees to deposit all rents and other receipts of the Project in the name of the Project in depositories that are insured and fully guaranteed as to principal by an agency of the United States or are otherwise acceptable to HUD. Such funds shall be withdrawn only in accordance with the provisions of this Agreement for reasonable and necessary expenses of the Project or for distribution of Surplus Cash as permitted by Section 15 below. Any person or entity receiving Mortgaged Property other than for payment of reasonable and necessary expenses or repairs or authorized Distributions of Surplus Cash shall immediately deliver such Mortgaged Property to the Project and failing so to do shall hold such Mortgaged Property in trust.

**14. SECURITY DEPOSITS.** Any funds collected as security deposits shall be kept (a) separate and apart from all other funds of the Project; (b) in interest bearing trust accounts, to the extent required by State or local law, and (c) the amount of which shall at all times equal or exceed the aggregate of all outstanding obligations under said account. Security deposit account interest shall be paid on a pro rata basis to tenants or applied to sums due under their leases upon the termination of their tenancy in the Project. The use of tenant security deposits for Project operations is prohibited unless the tenant has forfeited the deposit. The Mortgagor acknowledges that the unauthorized use of tenant security deposits for Project operations may

constitute an improper taking or theft, and such acts may be prosecutable under criminal statutes.

**15. DISTRIBUTIONS.** The Mortgagor shall not make, or receive and retain, nor allow any Affiliate to receive or retain any Distribution of assets or any income of any kind of the Project, except from Surplus Cash. Distributions are governed by the following conditions:

a. No Distribution shall be made from borrowed funds. Distributions shall not be taken prior to the completion of the Project. Distributions shall not be taken after HUD has declared a default under this Agreement or a default has been declared under the Note or Security Instrument. Distributions shall not be taken when a Project is under a forbearance agreement.

b. No Distribution shall be made when either (i) necessary services have not been provided, which failure the Mortgagor should have known about in the exercise of due care; (ii) notices of physical repairs or deficiencies (including but not limited to building code violations) by HUD and/or other Federal, State or local governing bodies have been issued and remain unresolved to the satisfaction of the issuing public body or (iii) the Mortgagor has been notified by HUD, the Mortgagee or other Federal, State or local governing body that physical repairs and/or deficiencies exist and the Mortgagor has not corrected or cured the identified items to HUD's satisfaction.

c. Any Distribution of any funds of the Project, which the party receiving such funds is not entitled to retain hereunder, shall be returned to the Project account immediately.

d. All allowable Distributions shall be made only as of or after the end of a semiannual or annual fiscal period, and only as permitted by the law of the applicable jurisdiction. All such Distributions to Section 221(d)(3), 231 and 232 Limited Distribution Mortgagors in any one fiscal year shall be limited to 6 percent on the initial equity investment, as determined by HUD, or to such other amounts as may be specified by HUD in its Directives and the right to such Distributions shall be cumulative. No Distributions may be taken in the case of Section 221(d)(3), 231 and 232 Public Body or Nonprofit Mortgagors unless permitted by regulation or HUD Directives. Distributions must be taken out of all Project accounts by all other Mortgagors within the accounting period immediately following the computation of Surplus Cash. The computation of Surplus Cash must be prepared at the end of the semiannual or annual fiscal period. Any such Distributions remaining in any Project account after the accounting period immediately following the computation of Surplus Cash shall only be used for reasonable and necessary Project operating expenses and repairs.

**16. REIMBURSEMENT OF ADVANCES.** Any advances made by the Mortgagor or on behalf of the Mortgagor or for the Mortgagor must be deposited into the Project account. The Mortgagor or any entity which advances funds on behalf of the Mortgagor or for the Mortgagor for reasonable and necessary operating expenses or repairs may be reimbursed from Surplus Cash at the end of the annual or semiannual period. Such repayment is not considered a Distribution. Monthly reimbursement of the Mortgagor or any entity that

advances funds on behalf of the Mortgagor or for the Mortgagor may be allowed with prior written approval by HUD.

**17. FINANCIAL ACCOUNTING.** The Mortgagor agrees to keep the books and accounts of the operation of the Mortgaged Property in accordance with the requirements of Generally Accepted Accounting Principles (GAAP) and of HUD. The books and accounts must be complete and accurate and must be kept current at all times. Posting must be made at least monthly to the ledger accounts, and year-end adjusting entries must be posted promptly in accordance with sound accounting principles. Any undocumented disbursement or withdrawal shall be presumed to be an ineligible Distribution. The Mortgagor agrees that these books and records shall be open and available for inspection by HUD, after reasonable prior notice, during normal office hours, at the Project or other mutually agreeable location. Any costs incurred by the Mortgagor because of the Mortgagor's failure to comply with the provisions of this Section 17 shall not be paid with funds of the Project.

**18. BOOKS OF MANAGEMENT AGENTS.** The Mortgagor agrees that the books and records of management agents, and Affiliates, as they pertain to the operations of the Project shall be maintained in accordance with GAAP and shall be open and available to inspection by HUD, after reasonable prior notice, during normal office hours, at the Project or other mutually agreeable location. Every contract executed on behalf of the Project with any management agent, or Affiliate, shall include the provision that the books and records of such entities shall be properly maintained and open to inspection during normal business hours by HUD at the Project or other mutually agreeable location.

**19. ANNUAL FINANCIAL AUDIT.** Within ninety (90) days, or such longer or shorter period established in writing by HUD, following the end of each fiscal year, the Mortgagor agrees to furnish HUD and the Mortgagee with a complete annual financial report based upon an examination of the books and records of the Mortgagor prepared in accordance with GAAP, audited in accordance with Generally Accepted Auditing Standards (GAAS) and Government Auditing Standards (GAS) and any additional requirements of HUD unless the report is waived in writing by HUD. If the Mortgagor fails to submit the annual financial report within ninety (90) days of said due date, the Mortgagor agrees that HUD may forthwith or at any time thereafter hire a Certified Public Accountant to prepare the report at the expense of the Mortgagor. The Mortgagor also agrees to pay HUD for the costs of any audits conducted by HUD's Office of Inspector General if charged such costs by HUD. The report shall include a certification in a form prescribed by HUD and certified by the Mortgagor. The report shall be prepared and certified by a Certified Public Accountant who is licensed and certified by a regulatory authority of a State or other political subdivision of the United States, which authority makes the Certified Public Accountant subject to regulations, disciplinary measures, or codes of ethics prescribed by law. The Certified Public Accountant must have no business relationship with the Mortgagor except for the performance of the audit, systems work, and tax preparation unless HUD expressly authorizes other relationships. Auditing costs and tax preparation costs may be charged as an authorized

expense to the Mortgaged Property only to the extent they are required of the Mortgagor entity itself by State law, the Internal Revenue Service (IRS), the Securities and Exchange Commission, or HUD. Neither IRS audit costs nor costs of tax preparation for the Mortgagor's partners, members, shareholders, or other persons receiving Distributions from the Mortgagor may be charged to the Mortgaged Property as a Project expense. Non-profit Mortgagors are to follow audit requirements specified in OMB circular A-133, as revised.

**20. KICKBACKS.** The Mortgagor shall not receive any fee, kickback or payment of any kind from any managing agent, employee of the Project or managing agent, or other provider of goods or services to the Project.

#### IV. PROJECT MANAGEMENT

**21. PRESERVATION, MANAGEMENT AND MAINTENANCE OF THE MORTGAGED PROPERTY.** The Mortgagor (a) shall not commit Waste nor permit impairment or deterioration of the Mortgaged Property, (b) shall not abandon the Mortgaged Property, (c) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as HUD may approve in writing, whether or not litigation or insurance proceeds, or condemnation awards are available to cover any costs of such restoration or repair, and (d) shall keep the Mortgaged Property in decent, safe, sanitary condition and good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality. Obligations (a) through (d) of this Section 21 are absolute and unconditional and are not limited by any conditions precedent and are not contingent on the availability of financial assistance from HUD or on HUD's performance of any administrative or contractual obligations. The Mortgaged Property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers and instruments must also be maintained in reasonable condition for proper audit and subject to examination by HUD at the Project or other mutually agreeable location. In the event all or any of the buildings covered by the Security Instrument shall be destroyed or damaged by fire, by an exercise of the power of eminent domain, by failure of warranty, or other casualty, the money derived from any settlement, judgment, or insurance on the Mortgaged Property shall be applied in accordance with the terms of the Security Instrument or as otherwise may be directed in writing by HUD.

**22. FLOOD HAZARDS.** If the Mortgaged Property is located in a special flood hazard area, the Mortgagor shall maintain flood insurance covering the Mortgaged Property in an amount at least equal to its development or the cost of the property (less estimated land cost) or to the maximum limit of coverage made available under the National Flood Insurance Act of 1968, as amended, or its successor legislation, whichever is less, provided that the amount of flood insurance need not exceed the outstanding principal balance of the Note, and flood insurance need not be maintained beyond the term of this Agreement.

**23. MANAGEMENT AGREEMENT.** The Mortgagor shall execute a management agreement or other document outlining procedures for operating the Mortgaged Property.

Such agreement or document must be acceptable to HUD. The Mortgagor and the management agent shall submit and maintain a current Management Certification meeting standards established by HUD.

**24. ACCEPTABILITY OF MANAGEMENT OF THE MORTGAGED PROPERTY.** The Mortgagor shall provide management of the Mortgaged Property in a manner deemed by HUD to be acceptable.

**25. TERMINATION OF CONTRACTS.** Any management contract entered into by the Mortgagor or any other contract related to the Mortgaged Property shall contain a provision that it shall be subject to termination without penalty and without cause upon written request by HUD and shall contain a provision which gives no more than a thirty day notice of termination. Upon such request, the Mortgagor shall immediately arrange to terminate the contract, and the Mortgagor shall also make arrangements satisfactory to HUD for continuing acceptable management of the Mortgaged Property effective as of the termination date of the contract.

**26. CONTRACTS FOR GOODS AND SERVICES.** The Mortgagor agrees to obtain contracts (including contracts for laundry services where laundry services are provided), materials, supplies, and services at the lowest possible cost and on terms most advantageous to the Mortgaged Property. Such expenses may not exceed amounts customarily paid in the vicinity of the Land for the goods and services received. Reasonable and necessary expenses do not include amounts paid for betterments or Improvements unless determined by HUD to be prudent and appropriate. When acquiring materials, supplies, or services whose usual costs are expected to exceed the greater of \$10,000 or 5 percent of the gross annual revenue of the Mortgaged Property, the Mortgagor shall solicit written cost estimates to assure that prices paid by the Mortgaged Property for supplies and services, including the preparation of the annual audit, are competitive with prices paid in the area for service and supplies of similar quality. All contracts, including but not limited to, contracts for goods and services purchased from individuals or companies affiliated with the Mortgagor or its management agent shall be at costs not in excess of those that would be incurred in making arms-length purchases on the open market. The Mortgagor shall keep copies of all written contracts or other instruments which affect the Mortgaged Property, all or any of which may be subject to inspection and examination by HUD at the Project or other mutually agreeable location.

**27. RESPONSIVENESS TO INQUIRIES.** At the request of HUD, the Mortgagor agrees promptly to furnish operating budgets and occupancy, accounting and other reports and to give specific answers to questions upon which information is desired relative to income, assets, liabilities, contracts, operation, and conditions of the Mortgaged Property and the status of the Security Instrument.

**28. TENANT ORGANIZATIONS.** The Mortgagor shall not (a) impede the reasonable efforts of resident tenant organizations to represent their members or the reasonable efforts of tenants to organize, or (b) unreasonably withhold the use of any community room or other available space appropriate for meetings which is part of the mortgaged

property when requested by: (i) a resident tenant organization in connection with the representational purposes of the organization; or (ii) tenants seeking to organize or to consider collectively any matter pertaining to the operation of the mortgaged property. The Mortgagor may charge for such use such fees or charges approved by HUD as may normally be imposed for the use of such facilities or may waive such charges.

## **29. COMPLIANCE WITH LAWS.**

a. The Mortgagor shall comply with all laws, ordinances, regulations and requirements of any governmental authority and all recorded lawful covenants and agreements (including the Security Instrument) relating to or affecting the Mortgaged Property, including the National Housing Act, and applicable regulations and Directives of HUD, all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Mortgaged Property, fair housing, civil rights, zoning and land use, and leases. The Mortgagor also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits. The Mortgagor shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 29. The Mortgagor shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by the Security Instrument or Mortgagee's interest in the Mortgaged Property. The Mortgagor represents and warrants to HUD that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

b. HUD shall be entitled to invoke any remedies available by law to redress any breach or to compel compliance by the Mortgagor of these requirements, including any remedies available hereunder.

## **V. ADMISSIONS AND OCCUPANCY**

**30. DWELLING ACCOMMODATIONS AND SERVICES.** If the Project is subject to regulation of rent by HUD, the Mortgagor shall make dwelling accommodations and services of the Project available to eligible residents at charges not exceeding those established in accordance with a rental schedule approved in writing by HUD.

**31. LEASE TERM.** The Mortgagor agrees that accommodations shall not be rented for a period of less than thirty (30) days or for more than 3 years.

**32. COMMERCIAL (NON-RESIDENTIAL) LEASES.** No portion of the Mortgaged Property shall be leased for any commercial purpose or use without receiving HUD's prior written approval as to terms, form and amount.

**33. SUBLEASES.** Subleasing of dwelling accommodations, except for subleases of single dwelling accommodations by the resident, shall be prohibited without the prior written approval of the Mortgagor and HUD and any lease shall so provide. Upon discovery of any unapproved



sublease, the Mortgagor shall immediately demand cancellation and notify HUD.

34. **ELDERLY PROJECTS.** For Elderly projects or Elderly portions of projects, the Mortgagor may restrict occupancy for elderly units to families where the head of household or spouse is 62 years or older. A single person 62 years of age or older shall constitute a family for the purposes of this Section 34.

35. **SECTION 231 PROJECTS.** If the Security Instrument is originally endorsed for insurance under Section 231 of the National Housing Act, the Mortgagor in selecting residents shall comply with all applicable HUD regulations and Directives.

36. **FAMILIES WITH CHILDREN.** The Mortgagor shall not, in selecting tenants, discriminate against any person or persons by reason of the fact that there are children (individuals who have not attained 18 years of age) in the family. For Elderly projects or Elderly portions of projects, the Mortgagor shall not discriminate against otherwise eligible applicants for admission to the elderly unit by reason of the fact that there are children in the family.

37. **DISPLACED PERSONS OR FAMILIES.** If the Security Instrument is originally endorsed for insurance under Section 221 of the National Housing Act, the Mortgagor, in selecting residents, shall give to Displaced Persons or Families an absolute preference or priority of occupancy to eligible applicants at initial occupancy and, on a continuing basis, such preferred applicants shall be given preference over non-preferred applicants in their placement on a waiting list to be maintained by the Mortgagor and through such further provisions agreed to in writing by the Mortgagor and HUD.

38. **RENTS.** If the Project is subject to regulation of rent by HUD, HUD will at any time entertain a written request for a rent increase that is properly supported by substantiating evidence and HUD shall, within a reasonable time: (a) approve a rental schedule that is necessary to compensate for any net increase, occurring since the last approved rental schedule, in taxes (other than income taxes) and operating and maintenance costs over which the Mortgagor has no effective control; or (b) deny the increase and state the reasons for its decision.

39. **CHARGES FOR SERVICES AND FACILITIES.** If the Project is subject to regulation of rent by HUD, the Mortgagor shall only charge to and receive from any resident such amounts as have the prior written approval of HUD and are mutually agreed upon between the Mortgagor and the tenant for any facilities and/or services not included in the HUD approved rent schedule which may be furnished by, or on behalf of, the Mortgagor to such resident upon request.

40. **PROHIBITION OF ADDITIONAL FEES.** The Mortgagor shall not charge any Project or Health Care Facility resident or prospective Project or Health Care Facility resident an admission fee, founders fee, continuing care retirement community fee, life-care fee or similar payment pursuant to any agreement to furnish Project accommodations or services to persons making such payments.

41. **SECURITY DEPOSITS.** The Mortgagor shall not require as a condition of occupancy or leasing of any unit in the Project, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not in excess of one month's rent to guarantee the performance of the lease terms.

## **VI. ACTIONS REQUIRING THE PRIOR WRITTEN APPROVAL OF HUD**

42. The Mortgagor shall not without the prior written approval of HUD:

a. Convey, assign, Transfer, pledge, hypothecate, encumber, or otherwise dispose of any of the Mortgaged Property or any interest therein, or permit such conveyance, assignment, Transfer, pledging, hypothecation, or encumbrance, or take any action which gives rights in another to establish or maintain a lien or encumbrance against the Mortgaged Property or any interest therein.

b. Enter into any contract, agreement or arrangement to borrow funds or finance any purchase or incur any liability, direct or contingent, other than for current, reasonable and necessary operating expenses and repairs.

c. Convey, assign, Transfer, pledge, hypothecate, encumber or otherwise dispose of any personal property of the Project, including Rents, charges, fees, carrying charges, other revenues and receipts, and security deposits, or pay out any funds except from Surplus Cash except for reasonable and necessary operating expenses or repairs.

d. Pay any compensation, including wages or salaries, or incur any obligation to do so, to any officer, director, stockholder, trustee, beneficiary, partner, member, or Principal, or to any nominee thereof.

e. Enter into, change, or agree to the assignment of, any contract, agreement or arrangement for supervisory or managerial services or leases for operation of the Project in whole or in part.

f. Convey, assign, or Transfer, or permit the conveyance, assignment or Transfer of, any of the following interests in any of the following entities holding title to the Mortgaged Property: the beneficial interest in any trust; the interest of any general partner in a partnership; the interest of any shareholder in a corporation; the interest of any managing member in a limited liability company; the interest of any partner in a limited liability partnership; or convey, assign or Transfer, or permit the conveyance, assignment or Transfer of the interest of any other Principal, or any right to manage or receive the Rents of the Mortgaged Property.

g. Remodel, add to, construct, reconstruct or demolish any part of the Mortgaged Property or subtract from any Land, Fixtures, Improvements or Personality of the Mortgaged Property.

h. Permit the use of the Mortgaged Property for any other purpose except the use for which it was originally intended, or permit commercial use greater than that originally approved by HUD.

- i. Engage, except for natural persons, in any business or activity, including the operation of any other project, or incur any liability or obligation not in connection with the Project, nor acquire an Affiliate.
- j. Receive any endowment which may not be pledged as security for its obligations to HUD or the Mortgagee unless the endowment by its terms is restricted to a specific purpose or purposes which do not include such a pledge.
- k. Amend, revise or cancel any provision or portion of the organizational documents of the Mortgagor.
- l. Institute litigation seeking the recovery of a sum in excess of \$25,000, nor settle or compromise any action for specific performance, damages, or other equitable relief, in excess of \$25,000, nor dispose of or distribute the proceeds thereof.

## VII. ENFORCEMENT

43. **VIOLATION OF AGREEMENT.** The occurrence of any one or more of the following shall constitute a Violation under this Agreement:

- a. Any failure by the Mortgagor to comply with any of the provisions of this Agreement;
- b. Any fraud or material misrepresentation or material omission by the Mortgagor, any of its officers, directors, trustees, general partners, members, managers or managing agent in connection with (1) any financial statement, rent roll or other report or information provided to HUD during the term of this Agreement or (2) any request for HUD's consent to any proposed action, including a request for disbursement of funds from any restricted account for which HUD's prior written approval is required; and
- c. The commencement of a forfeiture action or proceeding, whether civil or criminal, which, in HUD's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair HUD's interest in the Mortgaged Property.

44. **DECLARATION OF DEFAULT.** At any time during the existence of a Violation HUD may immediately declare a default under this Agreement or HUD may give written notice to the Mortgagor, by registered or certified mail, addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written notice to HUD, be designated by the Mortgagor as its legal business address. If the Violation is not corrected to the satisfaction of HUD either within thirty (30) days after the date such notice is mailed, or within such shorter or longer period of time set forth in said notice, as HUD determines appropriate, without further notice HUD may declare a default under this Agreement, and upon such Declaration of Default, HUD may:

- a. If HUD holds the Note, declare the whole of said Indebtedness immediately due and payable and then proceed with the foreclosure of the Security Instrument;

b. If said Note is not held by HUD, notify the holder of the Note of such default and require the holder to declare a default under the Note and Security Instrument, and the holder after receiving such notice and demand, shall declare the whole Indebtedness due and payable and thereupon proceed with foreclosure of the Security Instrument or assignment of the Note and Security Instrument to HUD as provided in HUD regulations and Directives. Upon assignment of the Note and Security Instrument to HUD, HUD may then proceed with the foreclosure of the Security Instrument;

c. Collect all rents and charges in connection with the operation of the Project and use such collections to pay the Mortgagor's obligations under this Agreement and under the Note and Security Instrument and the necessary expenses of preserving and operating the Mortgaged Property;

d. Take possession of the Mortgaged Property, bring any action necessary to enforce any rights of the Mortgagor growing out of the Mortgaged Property's operation, and maintain the Mortgaged Property in decent, safe, sanitary condition and good repair;

e. Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violations of the Agreement, for the appointment of a receiver to take over and operate the Project in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to HUD arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain;

f. Collect reasonable attorney fees related to enforcing the Mortgagor's compliance with this Agreement, and

g. With respect to Violations related to felony criminal convictions or civil judgments concerning the operation or management of the Mortgaged Property, direct the Mortgagor to replace any general partner, limited liability company member or non-member manager, limited liability limited partnership member, officer or director of the Mortgagor corporation, trustee, beneficiary of a trust, joint venturer, joint tenant or tenant in common with a natural person or entity acceptable to HUD pursuant to HUD's Participation and Compliance regulations and Directives.

45. **MEASURE OF DAMAGES.** The damage to HUD as a result of the Mortgagor's breach of duties and obligations under this Agreement shall be, in the case of failure to maintain the Mortgaged Property as required by this Agreement, the cost of the repairs required to return the Project to decent, safe and sanitary condition and good repair or, if the Project cannot be so repaired, the cost of providing equivalent replacement housing

46. **PERSONAL LIABILITY.** No person or entity is personally liable for payments due under the Note and Security Instrument, or for payments to the reserve for replacement fund or for matters not under their control, except, notwithstanding any provision of State law to the contrary, any person or entity is liable:

- a. For funds or property of the Project coming into its possession which, by the provisions hereof, the person or entity is not entitled to retain;
- b. For its own acts and deeds or acts and deeds of others which it has authorized in violation of the provisions hereof;
- c. For the acts or deeds of Affiliates which the person or entity has authorized in violation of the provisions hereof; and
- d. As otherwise provided by law.

### VIII. MISCELLANEOUS

47. **BINDING EFFECT.** This instrument shall bind, and the benefits shall inure to, the respective Mortgagor, its heirs, legal representative, executors, administrators, successors in office or interest, and assigns, and to HUD and HUD's successors, so long as the contract of mortgage insurance continues in effect, and during such further time as HUD shall be the Mortgagee, holder, coinsurer, or reinsurer of the Security Instrument, or obligated to reinsure the Security Instrument, or protect the residents of the Project.

48. **PARAMOUNT RIGHTS AND OBLIGATIONS.** The Mortgagor warrants that it has not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

49. **SEVERABILITY.** The invalidity of any clause, part, or provision of this Agreement shall not affect the validity or the remaining portions thereof.

50. **HEADINGS AND TITLES.** Any heading or title of a section, paragraph or part of this Agreement is intended for convenience only, and is not intended, and shall not be construed, to enlarge, restrict, limit or affect in any way the construction, meaning or application of the covenants or provisions thereunder or under any other heading or title.

51. **PRESENT ASSIGNMENT.** The Mortgagor irrevocably and unconditionally assigns, pledges, mortgages and transfers to HUD its rights to the Rents, charges, fees, carrying charges, Project accounts, security deposits, and other revenues and receipts of whatsoever sort which it may receive or be entitled to receive from the operation of the Mortgaged Property, subject to the assignment of Rents in the Security Instrument. Until a default is declared under this Agreement, revocable license is granted to the Mortgagor to collect and retain such Rents, charges, fees, carrying charges, Project accounts, security deposits, and other revenues and receipts, but upon a Declaration of Default under this Agreement or under the Security Instrument, this revocable license is automatically terminated.

52. **BANKRUPTCY AND ENCUMBRANCES.** (a) The Mortgagor shall not file any petition in bankruptcy, or for a receiver, or in insolvency, or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors or permit an

adjudication in bankruptcy, the taking possession of the Mortgaged Property or any part thereof by a receiver, or the seizure and sale of the Mortgaged Property or any part thereof under judicial process or pursuant to any power of sale and fail to have such adverse actions set aside within forty-five (45) days, and (b) The Mortgagor agrees to satisfy or obtain a release of any mechanics lien, attachment, judgment lien, or any other lien which attaches to any real or personal property of the Project or is used in its operation and to have dismissed or vacated any receivership of petition in bankruptcy or assignment for benefit of creditors, creditors' bills or insolvency proceedings involving the Project or its operation.

53. **NOTICES.** Any notice or other communication given or made pursuant to this Agreement to the Mortgagor or to the Lessee, if applicable, shall be made to the following addresses:

**MORTGAGOR:**

**LESSEE (if applicable):**

The Mortgagor or Lessee may, at any time, by written notice to HUD, designate a different address to which such communications shall thereafter be directed.

### IX. HEALTH CARE FACILITIES

The following provisions are applicable to Projects insured under Section 232 of the National Housing Act.

54. **APPLICABILITY.** All of the preceding definitions and provisions are applicable to Projects insured under Section 232 except those pertaining solely to rental housing Projects such as tenancy provisions pertaining to admission, occupancy and rental terms, as determined solely by HUD. The Mortgagor understands that, where Article IX is applicable and, in the event of any conflict or inconsistency between the provisions of this Article IX and the remainder of the Agreement, these provisions of Article IX shall be controlling.

55. **DEFINITIONS.** The following additional or revised definitions are applicable to Health Care Facilities:

a. **"Assisted Living Facility"** means a public facility, proprietary facility, or facility of a private non-profit corporation that is licensed and regulated by the State, municipality or other political subdivision where the Project is located. The facility must make available to the residents supportive services necessary to carry out activities of daily living, provide separate dwelling units for the residents and facilities appropriate for the provision of supportive services.

b. **"Bed Authority"** means any and all rights and documentation pertaining to the maximum number of beds allowed, including certificates of need (CoN) where issued,

required by and granted to be granted by the State of jurisdiction and its political subdivisions for operation of the project.

c. **"Board and Care Home"** means a proprietary residential facility or a residential facility owned by a private nonprofit corporation or association that provides room board and continuous protective oversight and which facility is regulated by a State.

d. **"Governmental Approval"** means any license, permits or certificate of need or other approval, necessary and required by the State or the municipality or other political subdivision in which the facility is located in order to operate the Project and to receive benefits under a provider agreement with Medicaid, Medicare or other assistance required by HUD's commitment to insure the Security Instrument.

e. **"Health Care Facility"** means a Project insured under Section 232 of the National Housing Act, as amended and includes nursing homes, intermediate care facilities, board and care homes, assisted living facilities, and any combination of the above.

f. **"Intermediate Care Facility"** means a proprietary facility or a facility of a private nonprofit corporation or association licensed or regulated by the State, municipality or political subdivision where the facility is located. The facility must provide for the accommodation of persons who because of incapacitating infirmities, require minimum, but continuous care, and are not in need of continuous medical or nursing services.

g. **"Nursing Home"** means a public facility, proprietary facility or a facility owned by a private nonprofit corporation or association licensed or regulated by the State, municipality or political subdivision where the facility is located, for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care but who require skilled nursing and related medical services which are prescribed by or under the direction of persons licensed by the laws of the State where the facility is located. In addition the term nursing home and intermediate care facility may include such additional facilities as may be authorized by HUD for the nonresidential care of elderly individuals and others who are able to live independently, but who require care during the day.

h. **"Project"** as used in this Agreement includes Health Care Facilities and includes the land on which the Improvements are situated and all major movable and other equipment necessary for operation as a Health Care Facility.

i. **"Project Revenue"** means all income derived from private pay, benefits and reimbursements under provider agreements with Medicaid, Medicare, State and local programs, payments from health care insurers and any other assistance providers, all rents, charges and fees received from leasing space on the Mortgaged Property, all contributions, donations, gifts, grants, bequests and endowment funds by donors and all other revenues received from any source paid or unpaid.

j. **"Proprietary Facility"** means that a facility owned by a profit motivated owner which may be a corporation, partnership, limited liability company, trust or any other qualified legal entity.

k. **"Public Facility"** means that the facility is owned by a Federal or State instrumentality, a municipal corporate instrumentality or one or more States, or a redevelopment or housing corporation formed under and restricted by Federal or State laws or regulations of a State department, such as a banking or insurance department as to charges, capital structure, rate of return, or methods of operation.

l. **"Sinking Fund Agreement"** means a depreciation reimbursement account to pay future principle payments on the Note, where Medicaid or other third-party reimbursement is on a depreciation plus interest basis.

56. **TYPE OF FACILITY.** The Mortgagor shall suitably equip and operate the Project as a (Check applicable provision.):

☐ Nursing Home  
☐ Intermediate Care Facility  
☐ Board and Care Facility  
☐ Assisted Living Facility  
☐ Combination of above (Specify per commitment) \_\_\_\_\_

(Failure to check the appropriate line shall not affect the enforceability or application of this Agreement to the appropriate type of Health Care Facility as determined by reference to the HUD commitment for the Project.)

57. **EQUIPMENT.** The Mortgagor shall, pursuant to HUD regulations, suitably equip the Project as a Nursing Home, Intermediate Care Facility, Board and Care Home and/or Assisted Living Facility, as designated in the commitment. The Mortgagor agrees to perform all obligations of any chattel mortgage, conditional sale, lease or lease-purchase agreement, or other type of financing arrangement designed to acquire equipment for the Project. Any plan for the acquisition of equipment (other than outright purchase) must be approved in writing by the Mortgagee and HUD and shall contain appropriate provision(s) extending to the Mortgagee and its successors or assigns, the option to assume such financing (or leasing) obligation of the Mortgagor upon default. Further, such financing (or leasing) arrangement shall require the vendor-lessor to furnish written notice of default to the Mortgagee and HUD before exercising any rights or remedies otherwise available to the vendor-lessor. The Mortgagor shall execute and record a security agreement, chattel mortgage or other appropriate security arrangement (as determined by the Mortgagee and HUD) in favor of the Mortgagee covering the Mortgagor's interest in all equipment and other Personalty unique to a Health Care Facility except for such equipment and Personalty as HUD may exempt from such coverage. The security instrument for such Personalty shall provide that a default in the terms of the Note and Security Instrument upon the Land shall also constitute a default thereunder.

58. **SINKING FUND.** Where Medicaid or other third-party reimbursement is on a depreciation plus interest basis, the Mortgagor shall make deposits to the Mortgagee or a

depository satisfactory to the Mortgagee under the terms of a Sinking Fund Agreement. The Mortgagor agrees to comply with the HUD requirements pertaining to the Sinking Fund Agreement as set forth in the Mortgagee's Certificate. The Mortgagor further agrees that monies in the Sinking Fund will be used to make payments of principal on the Note in later years to the extent that such principal payment exceeds the amount of depreciation reimbursement available for payment to principal at that time.

a. The Sinking Fund Agreement shall provide that in the event of a default under the Security Instrument pursuant to which the Note has been accelerated, HUD may apply or authorize the application of the balance of such fund to the amount due on the Note as accelerated.

b. The Mortgagor shall prepare and file with the Mortgagee by October 1 of each year, a depreciation schedule reviewed by the Mortgagor's Independent Public Accountant showing the total projected reimbursement for depreciation and amount payable for principal payments coming due in each fiscal year including the current fiscal year.

c. The Mortgagee's Certificate requires the Mortgagee to prepare and file with the Mortgagor by January 1 of each year, a funding schedule reflecting the amount required to be deposited in the Sinking Fund Account in each project fiscal year, and the cumulative balance in the account at the end of each such project fiscal year. Sums shall be deposited monthly into the account within fifteen (15) days of the close of each month, and shall commence upon the earlier of the commencement of amortization, as established in the commitment issued by HUD, or the initial receipt by the Mortgagor of depreciation reimbursement from any third-party payer. Such fund must at all times be held by or under the control of the Mortgagee, and must be invested in a manner that conforms to the same standards established by HUD for the investment of reserve for replacement funds.

d. In the event of any conflict or inconsistency between the Sinking Fund Agreement and the Loan Documents, applicable regulations and Directives, the said Loan Documents, regulations and Directives will control.

e. Nothing in this Agreement shall impair or prejudice any right that HUD may have with respect to the Sinking Fund, particularly relating to the duty of the Mortgagee to hold such funds for and on behalf of the Mortgagor.

59. **LICENSURE.** Any necessary license, Bed Authority or other Governmental Approval required to operate the Project and to receive benefits under a provider agreement with Medicaid, Medicare or other assistance provider relied upon by HUD in insuring the Note, shall be maintained in full force by the Mortgagor, and the Mortgagor shall maintain such provider agreements, except where such licenses, Bed Authority, Governmental Approval or provider agreements are provided and maintained by Lessee under specific provisions of the Lease.

60. **BED CAPACITY.** Project bed capacity and Bed Authority shall not be reduced or expanded, nor shall the Mortgagor cause or allow such capacity or Bed Authority to be reduced or expanded, without prior HUD approval.

61. **MORTGAGED PROPERTY AND REVENUE.** In addition to similar restrictions elsewhere in this Agreement and in the Security Instrument, Mortgaged Property shall not be pledged, assigned, transferred, conveyed, sold or otherwise obligated without HUD's prior written approval regardless of any approval by the Mortgagee. In addition, in the event HUD declares a default under terms of this Agreement or the Mortgagee declares a default under the Security Instrument:

a. HUD may direct the Mortgagee to take immediate possession of and use of such Mortgaged Property upon HUD's Declaration of Default and notification of the Mortgagor or HUD may, with the approval of the Mortgagee or after an assignment of the Security Instrument to HUD, take immediate possession and use of such Mortgaged Property and expend or dispose of such Mortgaged Property at the discretion of HUD. Such assignment shall be made without compensation from HUD or any other party, and shall include the following collateral:

i. Project Revenue (as that term is defined herein), accounts receivable, undisbursed Surplus Cash and Residual Receipts, escrow accounts, and provider agreements for Medicaid or Medicare payments or other assistance available for Project operation, and

ii. Government Approvals (as that term is defined herein) except as the jurisdiction may prohibit such assignment; and

b. These requirements also apply to any management agent contract or lease for operation of the Project.

62. **PRORATION OF REVENUE.** All benefits realized from any obligation of future Project Revenue for which HUD may give written approval must be prorated over the period of such encumbrance for purposes of computing Surplus Cash or any form of disbursement to the Mortgagor for any financial period.

63. **NOTIFICATION.** The Mortgagee and HUD shall be notified by the Mortgagor of any suspension or termination of funding under a provider agreement with Medicaid, Medicare, or any other assistance from any source whatsoever within 7 days of Mortgagor's knowledge of such suspension or termination.

64. **MANAGEMENT OF CONTRACTS.** The requirements of this Article IX shall also be imposed upon any party to any management contract or management agent contract executed in connection with the Project

65. **LEASE OF FACILITY.** In cases where a Health Care Facility is leased to any entity (Lessee), the following additional requirements are applicable:

a. In Sections 54 - 64, wherever applicable and wherever possible, as interpreted by HUD, Mortgagor shall be read as Lessee.

b. Consistent with, and in addition to, the requirements of Section 19, the Mortgagor shall prepare a consolidated annual financial report combining the annual financial audit of the Lessee with the Mortgagor's financial audit. If the Lessee does not provide the Mortgagor with an audited financial report on the operation of the Health Care Facility within sixty (60) days following the end of each fiscal year, the Mortgagor may

retain a certified public accountant to prepare the report at the expense of the Lessee.

c. The Lessee must sign this Agreement (or formally acknowledge this Agreement in the event of a subsequent lease or transfer involving a Lease); however, any failure to so sign or formally acknowledge this Agreement shall in no way be a bar to this Agreement being fully binding upon and enforceable against the Lessee.

d. The Lease and any and all extensions, modifications and renewals thereof, and all of the Lessee's rights and interest thereunder, are hereby subjected and subordinated to the Security Instrument securing the Note and to this Agreement between the Lessee of the Project and HUD, and, in the event of a conflict between the Lease and the Loan Documents, the Loan Documents shall control.

e. The Lessee shall be the sole user and/or operator of the improvements and equipment that is stipulated in the Lease. The Lessee shall not be an Affiliate of the Mortgagor, Mortgagee or any other party to the Security Instrument transaction except with the prior written approval of HUD. Where there is an affiliation between the Mortgagor and the Lessee, the Lessee agrees at the time of cost certification to submit an audited operating statement in accordance with current requirements and instructions.

f. Any license, Bed Authority or other Governmental Approval required to operate the Project and to receive benefits under a provider agreement with Medicaid, Medicare or other assistance relied upon by HUD to insure the Security Instrument, and such provider agreements, shall be secured and maintained in full force by the Lessee, except to the extent to which the Mortgagor is specifically made responsible for such license, Bed Authority, Governmental Approval or provider agreements and their maintenance.

g. Consistent with, and in addition to, the requirements of Section 19, the Lessee agrees that within sixty (60) days following the end of each fiscal year, it will furnish to the Mortgagor a complete annual audited financial report on the operation of the Health Care Facility. The Lessee agrees that this financial information must be prepared in accordance with GAAP based upon examinations of the books and records the Lessee has established and maintained for the operation of the facility. The Lessee acknowledges and understands that this annual audited financial report is a part of the consolidated report that the Mortgagor must submit to HUD. If the Lessee fails to provide the Mortgagor with the report, the Mortgagor may retain a certified public accountant to prepare the report at the expense of the Lessee.

h. As security to HUD for approving the Lease, the Lessee agrees to assign to Mortgagor, the Mortgagee or HUD, as directed by HUD, any Mortgaged Property in which the Lessee has any interest under the Lease or otherwise all in accordance with and in addition to the requirements of Section 61.

i. Lease payments to the Mortgagor shall be renegotiated within ninety (90) days of HUD's written request at a sufficiently higher amount to permit the Mortgagor to make

all payments due under the Note, including escrow deposits for taxes, insurance, and special assessments; deposits to the Sinking Fund Account, where applicable; deposits to the Reserve for Replacements; and to perform maintenance required by terms of the Security Instrument and this Agreement for which the Lessee is not obligated to perform under terms of the Lease, if at the end of any the Mortgagor's annual operating period, payments under the lease have not be sufficient for such purposes.

j. Payments under terms of the Lease shall be made when due.

k. Any Transfer or change in ownership of the Lessee entity exceeding twenty-five (25) percent financial or governance interest; and any Transfer or change of the management, operation or control of the Project shall have prior written HUD approval.

#### **X. SECTION 8 HOUSING ASSISTANCE PAYMENTS CONTRACTS**

The following additional provisions are applicable to Projects for which the Mortgagor has entered into a Section 8 Housing Assistance Payments Contract:

66. **Definitions.** The following additional definitions are applicable to Projects for which the Mortgagor has entered into a Section 8 Housing Assistance Payments Contract:

a. **"Section 8 units"** refers to units assisted under Section 8 of the United States Housing Act of 1937, as amended, pursuant to a Housing Assistance Payments Contract.

b. **"Housing Assistance Payments Contract"** refers to a written contract between the Mortgagor and HUD, or the Mortgagor and a Public Housing Agency, or the Mortgagor and a Housing Finance Agency for the purpose of providing housing assistance payments to the Mortgagor on behalf of eligible families under Section 8 of the United States Housing Act of 1937.

67. **ADMISSION.** The criteria governing eligibility of tenants for admission to Section 8 units and the conditions of continued occupancy shall be in accordance with the Housing Assistance Payments Contract.

68. **RENTS.** The maximum rent for each Section 8 unit is stated in the Housing Assistance Payments Contract and adjustments in such rents shall be made in accordance with the terms of the Housing Assistance Payments Contract.

69. **CONTRACTUAL OBLIGATIONS.** Nothing contained herein shall be construed to relieve the Mortgagor of any obligations under the Housing Assistance Payments Contract.

70. **INCORPORATION BY REFERENCE.** The terms of Housing Assistance Payments Contract are incorporated by reference into this Agreement. In the case of a conflict between this Agreement and the Housing Assistance Payments Contract, the Housing Assistance Payments Contract shall be controlling.

71. **VIOLATION OF HOUSING ASSISTANCE PAYMENTS CONTRACT.** A violation of the terms of the Housing Assistance Payments Contract may be construed to constitute a violation hereunder in the sole discretion of HUD.

of the date of the expiration or termination of the Housing Assistance Payments Contract.

72. **EXPIRATION AND TERMINATION OF THE HOUSING ASSISTANCE PAYMENTS CONTRACT.** In the event said Housing Assistance Payments Contract expires or terminates before the expiration or termination of this Agreement, the provisions of this Agreement that pertain to the Housing Assistance Payments Contract shall automatically terminate and shall no longer be effective as

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first herein above written.

**MORTGAGOR**  
(insert name)

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

BY: \_\_\_\_\_  
Authorized Agent  
Title

BY: \_\_\_\_\_  
Authorized Agent

\_\_\_\_\_  
Principal  
Title

\_\_\_\_\_  
Principal  
Title

**LESSEE**  
(insert name)

BY: \_\_\_\_\_  
Authorized Agent  
Title

**NOTICE: THIS DOCUMENT MUST HAVE A LEGAL DESCRIPTION ATTACHED AND BE EXECUTED WITH ALL FORMALITIES REQUIRED FOR RECORDING A DEED TO REAL ESTATE (IF APPLICABLE, NOTARY/ACKNOWLEDGEMENT, SEAL, WITNESS OR OTHER APPROPRIATE FORMALITIES).**

**Warning: The following criminal and civil statutes may be applicable for violations of this Regulatory Agreement:**

**Title 12 of the U.S. Code Section 1715z-19 (Equity Skimming)** provides in part: Whoever, as an owner of a property which is security for a mortgage (covering multifamily housing, as defined in the regulations of HUD) or as a stockholder, beneficial owner, trust, or as an officer, director or agent of any such owner (1) willfully uses or authorizes the use of any part of the rents or other funds derived from the property covered by such mortgage in violation of a regulation, (2) willfully and knowingly uses or authorizes the use, while such mortgage is in default, or any part of the rents or expense shall be fined not more than \$5,000 or imprisoned not more than three years or both.

**Title 18 of the U.S. Code, Section 1001** makes a criminal offense to make a willfully false statement or misrepresentation to any Department or Agency of the United States as to any matter within its jurisdiction.

**Title 12 of the U.S. Code Section 1715z-4a (Double Damages)** provides in part that HUD may recover double the value of any assets or income of a project that a court determines were used by any person in violation of the project's Regulatory Agreement or applicable regulations. The term "person" includes any stockholder holding twenty-five (25) percent or more interest of a

corporation that owns the project; any beneficial owner under any trust; any officer, director or partner of any entity owning the Project; and any heir, assignee, successor in interest or agent of any owner.

**Title 12 of the U.S. Code Section 1735f-15 (Civil Money Penalties)** provides in part that HUD may impose civil money penalties against a multifamily mortgagor; any general partner of a partnership mortgagor; any officer or director of a corporate mortgagor; any agent employed to manage the property that has an identity of interest with the mortgagor, with the general partner of a partnership mortgagor or with an officer or director of a corporate mortgagor; or any member of a limited liability company that is the mortgagor of such property or is the general partner of a limited partnership mortgagor or is a partner of a general partnership mortgagor for knowingly and materially taking any action listed in 12 U.S.C. §1735f-15(b)(1) and (c)(1)(B). A penalty imposed by HUD for a violation may not exceed \$25,000.